

REMARKS

Claims 1-37 are pending in this application. In the Office Action, Claims 1-3, 10-12, 19-21, and 29-31 were rejected as follows: Claims 1-3 and 10-12 were provisionally rejected based on a judicially created doctrine of nonstatutory obviousness-type double patenting (“ODP”) as being unpatentable over Claims 1, 2 and 3 of co-pending U.S. Patent application serial number 10/695,579, which corresponds to your reference P10803-US/ST (our docket 678-1212) (herein referred to as the “‘579 appl.”); and Claims 19-21 and 29-31 were provisionally rejected based on a judicially created doctrine of nonstatutory ODP as being unpatentable over Claims 15, 16 and 17 of co-pending U.S. Patent application serial number 10/695,493, which corresponds to your reference P10802-US/ST (our docket 678-1211) (herein referred to as the “‘493 appl.”). Claims 4-9, 13-18, 22-28 and 32-37 were objected to as being dependent upon a rejected base claim, and were found to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The indication in the Office Action that all claims in this application are allowable once the provisional double patenting rejections are overcome is gratefully acknowledged.

In the Office Action it was suggested that a terminal disclaimer in compliance with 37 C.F.R. 1.321(c) be filed to overcome the ODP rejection. (Office Action, page 2.) However, at least because this present application was filed before either the ‘579 appl. or the ‘493 appl., the ODP rejection is improper and should be withdrawn.

In regard to the provisional ODP rejection of Claims 1-3 and 10-12, Claims 1, 2 and 3 of the ‘579 appl., it must be considered that the present application was filed on October 27, 2003. In contrast, the ‘579 appl. was subsequently filed on October 28, 2003. Since the ‘579 application is the later-filed application, the ODP rejection should be withdrawn, in accordance with the instruction provided by MPEP 804.I.B(1):

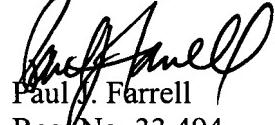
"If 'provisional' ODP rejections in two applications are the only rejections remaining in those applications, the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer."

Similarly, in regard to the provisional ODP rejection of Claims 19-21 and 29-31 in view of Claims 15, 16 and 17 of the '493 appl., it must also be considered that the '493 appl. was filed on October 28, 2003, which is after the filing of this present application. As discussed above, the ODP rejection based on Claims 15, 16 and 17 of the '493 appl. should be withdrawn.

Accordingly, the ODP rejections should be withdrawn, and pending Claims 1-37 should be allowed to proceed to issuance. Applicant(s) invite the Examiner to contact the undersigned representative to resolve any remaining issues, to expedite handling of this application.

Accordingly, all of the claims pending in the Application, namely, Claims 1-37 are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicant's attorney at the number given below.

Respectfully submitted,


Paul J. Farrell
Reg. No. 33,494
Attorney for Applicant

THE FARRELL LAW FIRM, P.C.
333 Earle Ovington Blvd.
Uniondale, New York 11553
Tel: (516) 228-3565
Fax: (516) 228-8475